

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of)

Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)

Rate Regulation)

MM Docket No. 92-266

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF NEWHOUSE
BROADCASTING CORPORATION IN RESPONSE TO
THE THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

Newhouse Broadcasting Corporation ("Newhouse"), by its attorneys, hereby submits its comments in response to the Third Further Notice of Proposed Rulemaking ("Third Notice") in the above-captioned proceeding.¹ Newhouse, through its affiliated cable companies NewChannels Corp., MetroVision, Inc., and Vision Cable Communications, Inc., owns and operates cable television systems serving approximately 1,350,000 subscribers in

¹Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, First Order on Reconsideration, Second Report and Order, and Third Further Notice of Proposed Rulemaking, MM Dkt. No. 92-266 (rel. Aug. 27, 1993).

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17 states. The purpose of these comments is to urge the Commission to modify its "going forward" rate adjustment proposal as it applies to "below benchmark" cable systems.

DISCUSSION

At various stages throughout this proceeding, Newhouse has urged the Commission to exercise caution in applying rate regulation to "good actors" -- companies, such as Newhouse, that, even in the absence of regulation, have maintained a historically low rate structure (despite often having higher per subscriber programming costs than the largest MSOs). Notwithstanding our entreaties, however, the Commission has constructed a regulatory scheme that consistently penalizes good actors while protecting (and occasionally rewarding) those operators with excessive rates at whom the 1992 Cable Act was truly directed. The result is that in many Newhouse systems rates are lower than in the great majority of the similarly situated competitive systems surveyed by the Commission and yet Newhouse has been adversely impacted by many aspects of the new rules.

In particular, the Commission has capped below benchmark system rates at their April 1993 price levels and forced tier neutral rate restructuring.² By refusing to allow the overall rates charged by below benchmark systems to rise at least to the presumptively reasonable benchmark level, the Commission has limited the ability of these systems to finance improvements in technology and programming that would benefit subscribers. And by

²The Third Notice also proposes to allow "below benchmark" systems that have recently completed system upgrades to raise their rates to the benchmark level. While Newhouse supports such a proposal (with an appropriate definition of what constitutes an upgrade) it is not a remedy for the inequities inherent in the Commission's initial Report and Order. Additional steps, such as adoption of the going forward proposal described herein, are needed to correct the imbalance.

applying a "tier neutral" rate methodology in its initial order, the Commission has forced systems with low basic rates to increase those rates, often substantially, thereby transforming systems under the benchmark into bad actors in the eyes of Congress, the press, and cable subscribers.³

Newhouse had hoped that, in fashioning a "going forward" approach, the Commission would attempt to ameliorate the inequities of its initial rate regulation scheme as applied to below benchmark systems. Instead, however, it appears that the Commission's preferred methodology will actually exacerbate the difficulties faced by good actors. For example, under the Commission's proposal, the lower a system's initial Line 600 rate, the lower the system's return when it adds a channel. Similarly, the higher a system's average programming cost, the lower its return when a channel is added. Low rates and higher programming costs should not be characteristics the Commission should penalize in its new methodology. And yet this is exactly the result. Indeed, for a company such as Newhouse, which has lower rates and higher programming costs than some other operators, the Commission's proposal is a double whammy.

In order to at least partially mitigate the effects of the Commission's going forward approach on good actors, and to create incentives for such systems to add channels to regulated tiers, Newhouse submits that the Commission must modify its going forward approach as applied to below benchmark systems. Specifically, where a system's "Base Rate

³The Commission currently is conducting a rate survey to determine how many subscribers bills have gone up or down since the rate freeze was imposed in April. What is unfair and unfortunate -- particularly for good actors -- is that "increases" in bills largely are a function of tier neutrality, not any violation of the rate freeze.

per Channel" (Line 110) is below the benchmark table level as of September 1, 1993, the system should be permitted to recalculate its Line 600 rate using the benchmark table rate before applying the Commission's going forward formula. If the going forward calculation using this recomputed Line 600 results in a new maximum permitted rate that is less than the system's initial, below benchmark Line 600 rate, the new rate will apply to all channels on the tier to which service has been added.⁴ If, however, the new maximum permitted rate is greater than the initial Line 600, then the system will apply the new rate to the newly added channel; existing channels will remain at their original, below benchmark level.

Although this approach may seem complicated, it is actually simple to apply. To illustrate: assume that, as of September 1, 1993, a system's "Base Rate per Channel" (Line 110) is .599, its "Benchmark Channel Rate" (Line 121) is .604, and its "Maximum Initial Permitted Rate per Channel" (Line 600) is .582. Because Line 110 is less than Line 121, the system is "below benchmark." Therefore, in applying the Commission's "going forward" formula, the system would first recompute Line 600 substituting .604 for .599 in Line 110, resulting in a new Line 600 of .587. The system would then apply the Commission's going forward formula. If the resulting new permitted rate was .582 or less, the new rate would apply to all of the channels on the affected tier. If the new permitted rate exceeded .582, then only the newly added channels would be priced at the new rate; the existing channels would remain at .582.

⁴It is somewhat unclear whether the Commission intends its proposal to apply on a tier-neutral or a tier-specific basis. Newhouse submits that it is essential that the going forward approach be applied on a tier-specific basis. Maintaining the neutrality simply exacerbates the prejudice going forward.

The above-described proposal represents a modest attempt to correct at least some of the blatant deficiencies in the Commission's regulatory approach. And while it adds an additional step to the calculation of a going forward rate, the result will be to create incentives for below benchmark systems to add new channels, thereby benefitting subscribers. Newhouse strongly urges the Commission to adopt this proposal.

Respectfully submitted,

NEWHOUSE BROADCASTING
CORPORATION

A handwritten signature in black ink, appearing to read 'S. Walsh', is written over a horizontal line.

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